

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

Kevin Embry,

NO. C 09-01808 JW

Plaintiff,

v.

**ORDER REQUESTING FURTHER
REVISED PROPOSED ORDER FOR
JOINT MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

ACER America Corp.,

Defendant.

On September 7, 2011, the Court ordered the parties in this case to file a revised Proposed Order for Preliminary Approval of Class Action Settlement “which shall include the name of the settlement administrator,” as the Court found that the parties had failed to propose a settlement claim administrator in their Joint Motion for Preliminary Approval of Class Action Settlement and its supporting papers. (See Docket Item No. 178.) On September 8, 2011, Plaintiff filed a Supplemental Memorandum contending that the Settlement Agreement provides that “Claim Administrator” means “Defendant *or* a qualified third-party,” and that the parties “have subsequently confirmed that [Defendant] itself will be acting as Claim Administrator.”¹ On September 8, 2011, the parties also filed a Revised Proposed Order. (hereafter, “Revised Proposed


¹ (Supplemental Memorandum of Points and Authorities in Support of Motion for Preliminary Approval of Class Action Settlement at 1, Docket Item No. 179.) The parties contend that Defendant is “well-placed to serve as claim administrator,” as it has done so in a prior “federal class action settlement.” (Id.)

1 Order,” Docket Item No. 180.) The Revised Proposed Order does not provide a date for the Final
2 Fairness Hearing.²

3 Upon review, the Court finds that Defendant is not a suitable claim administrator because
4 there is a potential conflict of interest. Accordingly, on or before **September 12, 2011, at 8 a.m.**,
5 the parties shall file a further revised Proposed Order for Preliminary Approval of Class Action
6 Settlement which shall include the name of a qualified third-party claim administrator.³ The revised
7 Proposed Order shall also provide a date for the Final Fairness Hearing which comports with the
8 Court’s calendar, as well as other proposed dates which shall allow sufficient time, *inter alia*, for
9 class members to exclude themselves from the settlement class or object to the settlement and any
10 proposed attorney fees.

11 To the extent that the parties are unable to obtain a third-party claim administrator by
12 September 12, 2011, the parties may file a Stipulation to continue the hearing on Preliminary
13 Approval to September 19, 2011, so as to provide the parties with sufficient time to file a Revised
14 Proposed Order consistent with the terms of this Order.

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17 Dated: September 9, 2011



JAMES WARE
United States District Chief Judge

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25 ² However, it states that a “Final Approval Hearing” shall be held “at least seventy-five (75)
26 days after the emailing of the Class Notice.” (Revised Proposed Order at 2.)

27 ³ In light of the fact that the hearing on the Joint Motion for Preliminary Approval of Class
28 Action Settlement is scheduled for September 12, 2011 at 9 a.m., it is imperative that the revised
Proposed Order be filed by this deadline.

1 **THIS IS TO CERTIFY THAT COPIES OF THIS ORDER HAVE BEEN DELIVERED TO:**

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8 **Dated: September 9, 2011**

Richard W. Wieking, Clerk

9 **By: /s/ JW Chambers**
10 **Susan Imbriani**
11 **Courtroom Deputy**